

Remarks

Claims 2, 4, 5, 7, 10, 11, and 19-24 are currently pending and stand rejected. Applicants assert that the claims are in condition for allowance after final as set forth more fully below.

103 Rejections

Claims 2, 4, 5, 7, 10, 11, and 19-24 stand rejected under 35 USC 102(b) as being unpatentable over Pruett (US Pat 5,953,389). It is stated that Pruett discloses all of the elements except billing the entity found to be responsible for the cause of the malfunction that resulted costs associated with a technician visiting at least one customer premises where the cause was at another location. However, the Office Action has taken Official Notice that it is well known in the art to bill the party responsible for all costs incurred. Applicants respectfully traverse these rejections.

In making the rejection of the claims, the Office Action makes certain leaps between what Pruett discloses and what the supposed Official Notice provides in order to reject the claims. The Office Action has stated that the Official Notice is not that it is well known “that billing the entity other than the customer for the costs associated with the visit to the customer location is well-known.” Rather, the Official Notice is just that it is well known to bill the entity responsible for all costs incurred. However, what the Office Action fails to cover in adequate detail is that there must be the ability to track what the costs incurred are before the responsible entity can be billed for all of them. The Office Action appears to assume that Pruett has all the essentials for doing so, but Applicants assert such is not the case.

In order to bill the entity who caused the problem in one location for the costs of a technician visiting a customer premises which is another location requires that there be an association of the two. For example, the specification of the present application adequately provides enablement for such billing as claimed by keeping track of what twisted pair numbers are involved with the actual problem, and keeping track of the twisted pair number associated with each visit by a technician and then when the twisted pair numbers associated with a particular visit by a technician falls within the twisted pair numbers involved with the actual problem, then the costs that have been tracked for the

visit are also associated with the bill to be sent to the entity who caused the problem. See page 16, line 15-22, where repair visits to twisted pair numbers failing in the range of 1-200 are billed to an entity who damaged twisted pairs 1-200 of trunk line 304.

The Office Action merely states that Pruett includes has an associated cause description for visits by technicians. There is no specific citation to where Pruett associates the costs of a visit to one location with the repairs at another location, and as Pruett completely fails to contemplate such specific billing, Pruett does not provide any reason to do so. In Pruett, the cause description at the customer location that has been visited prior to the problem being fixed at another location cannot possibly designate that the cause is the problem at the other location because it is the diagnosis of no problem at the customer location that contributes to the telecommunications provider to look elsewhere for the problem. Thus, the cause description for a visit to a customer location where no problem and no cause has been found will not serve to associate the visit and costs for it with the repair to the actual problem at some other location. As discussed above, the Official Notice that has been taken does not provide for this specific association of costs at one customer location being associated with repairs done for the problem that has occurred at another location. Therefore, neither Pruett nor the Official Notice discloses such association such that Pruett as modified by the Official Notice is incapable of billing the entity responsible for the problem for all costs including the costs of visiting other locations because there is no association that has been disclosed.

Additionally, the Examiner's assertion that the system of Pruett may know that the problem is at one location by visiting a customer location first is an example of making another leap not supported by the reference. Pruett does not disclose that the problem is discovered by visiting a customer location other than where the problem is located, and to assume that is the case is certainly an application of hindsight based on the present application. For example, the service provider itself could have severed a major trunk line and would know at that moment that many customers will have service issues without ever visiting a single one of the customers. It is just as likely that the system of Pruett is aware of the problem from that scenario as the one that the Examiner has stated as if it was fact.

Accordingly, in order to state that it would be obvious to make such an association in Pruett will require the Examiner to take Official Notice again or produce a reference, but this time the Official Notice will need to be more specific regarding making a visit to a customer to diagnose a problem that is not there and associating the cost for that visit with the actual problem located elsewhere, as discussed above. Furthermore, the guidelines for taking Official Notice as set forth in the MPEP section 2144.03 must be followed. As stated in these guidelines:

While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.

Because this application is currently after final, Official Notice is not permitted unless it is "capable of instant and unquestionable demonstration as being well-known," but the Office Action has already conceded that it is unknown to the Examiner whether telecommunications companies bill an entity who caused a problem for costs that have occurred due to visits to other customer locations, so it is also likely unknown whether such associations necessary to do such billing are well known. Therefore, Official Notice of such associations being well known is not permitted at this time.

Additionally, the MPEP at 2144.03 states that "any facts so noticed should be of notorious character and serve only to "fill in the gaps" in an insubstantial manner which might exist in the evidentiary showing made by the examiner to support a particular ground for rejection." Applicants assert that a key to enabling what is claimed is the association of the visit to the customer with the repair at another location and that accounting for such not being disclosed by Pruett requires more than a mere filling in of gaps in an insubstantial manner. Therefore, Official Notice is impermissible for this additional reason.

Furthermore, Applicants assert in advance that doing such association is indeed not well known, that the Examiner is applying impermissible hindsight based on the teachings of the present application in taking such Official Notice since Pruett does not

even contemplate the problem being solved by the claims, and that such Official Notice must therefore be supported by a valid reference anyway. Additionally, in the context of a 103 rejection, there must be motivation for such a combination with Pruett, which requires among other things that the reference be in an analogous art. So stating that something is well known in the realm of costs for automobile accidents, or providing a reference that discloses such, is not analogous to a reference dealing with costs associated with diagnosing telecommunications problems. Therefore, Applicants assert that the reference to support such Official Notice of associations of a visit to one customer with repairs at another location being well known, should one exist, must be from the telecommunications diagnosis arts.

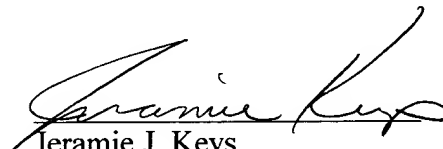
Conclusion

Applicants assert that the application including claims 2, 4, 5, 7, 10, 11, and 19-24 is now in condition for allowance. Applicants request reconsideration after final in view of the remarks above and further request that a Notice of Allowability be provided. Should the Examiner have any questions, please contact the undersigned.

No fees are believed due. However, please charge any additional fees or credit any overpayment to Deposit Account No. 50-3025.

Respectfully submitted,

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